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**FEDERAL ELECTION COMMISSION**  
**999 E Street, N.W.**  
**Washington, D.C. 20463**

**FIRST GENERAL COUNSEL'S REPORT**

**SENSITIVE**

**MUR 6119**

DATE COMPLAINT FILED: October 29, 2008  
DATE OF NOTIFICATION: November 5, 2008  
DATE OF LAST RESPONSE: November 21, 2008  
DATE ACTIVATED: February 3, 2009

STATUTE OF LIMITATIONS: October 4, 2013

**COMPLAINANT:** James E. Mather

**RESPONDENT:** Local Division 662 – Brotherhood of Locomotive  
Engineers and Trainmen

**RELEVANT STATUTES:** 2 U.S.C. § 441b(a)  
11 C.F.R. § 114.2(c)  
11 C.F.R. § 114.3(a)  
11 C.F.R. § 114.4

**INTERNAL REPORTS CHECKED:** Disclosure Reports

**FEDERAL AGENCIES CHECKED:** None

**I. INTRODUCTION AND FACTUAL OVERVIEW**

The complaint in this matter alleges that Local 662 of the Brotherhood of Locomotive Engineers and Trainmen ("BLET") made a prohibited contribution to the "Democratic Party" by paying members with BLET dues money to "actively join and campaign for the Democratic Party" in violation of the Act. *See Complaint.*

Complainant is a member of Local Division 662 and alleges that he received an email from BLET Local 662 State Chairman, Tim Smith, on October 4, 2008 asking for volunteers interested in helping the "Democratic Campaign." *See Complaint Attachment.*

1 The email stated, in relevant part, "your expenses and a daily rate of \$235 will be covered  
2 by National." *Id.* The email notes that the term "National" referred to the Teamsters  
3 National. *See* Complaint. It appears that the International Brotherhood of Teamsters  
4 ("IBT") merged with the predecessor union, Brotherhood of Locomotive Engineers on  
5 January 1, 2004 and became the Brotherhood of Locomotive Engineers and Trainmen.<sup>1</sup>

6 The Brotherhood of Locomotive Engineers and Trainmen is a Division of the Rail  
7 Conference of the International Brotherhood of Teamsters. Its predecessor union, the  
8 Brotherhood of Locomotive Engineers ("BLE"), was the senior national labor  
9 organization in the United States and also North America's oldest rail labor union. *See*  
10 <http://www.ble.org>. BLE merged with the International Brotherhood of Teamsters and  
11 became BLET on January 1, 2004. *Id.* BLET's total membership is more than 59,000,  
12 and the local units are known as divisions, which each elect four primary local officers.  
13 *Id.* The National Division is located in Cleveland, Ohio, and the local Division 662 is  
14 located in Los Angeles, California. *Id.*

15 Complainant asserts that it is illegal for a labor union to make a contribution to a  
16 federal campaign, and the email stating that BLET would pay members to campaign for  
17 the Democratic Party is evidence of the prohibited contribution. *See* Complaint. In  
18 addition, it appears that Complainant disagreed with BLET's decision to support then-  
19 presidential candidate, Barack Obama. *Id.*

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<sup>1</sup> The FEC database indicates that the National Office of BLET has filed reports as an unauthorized committee. While there is no information to indicate that BLET has established a separate segregated fund, FEC records do reflect that IBT, with whom BLET is affiliated, has established a separate segregated fund (SSF) called Democrat Republican Independent Voter Education ("DRIVE").

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1 In response to the complaint, Respondent states that the email was written by the  
2 Chairman of BLET's California State Legislative Board and ultimately forwarded to the  
3 local chairman of the Division 662 seeking volunteers to communicate with other  
4 members in the 2008 presidential campaign. *See* Response. The email was then sent to  
5 Complainant, as a member of BLET and Local Division 662. *Id.* Respondent asserts that  
6 BLET is permitted to use general treasury funds to defray the costs of communications  
7 with its members and families, on any subject, including expressly advocating the  
8 election or defeat of federal candidates and officeholders." *Id.*; *see also* 2 U.S.C.  
9 § 431(9)(B)(iii); 11 C.F.R. § 114.3(a).

10 The response also includes a declaration from BLET's national secretary-treasury  
11 confirming that all communications and subsequent communications by volunteers were  
12 member-to-member communications. *See* Response Attachment. However, the response  
13 does not address the issue of whether the funds used to pay the expenses and daily rate  
14 for those members who volunteered were covered by IBT, BLET, or some other entity.  
15 In addition, neither the response nor the declaration provides any details regarding the  
16 specific type of volunteer activity involved, such as whether the activity took place  
17 during work hours.

18 We provided Respondent with the opportunity to provide further information  
19 regarding the source of the payment and expenses paid to those members who  
20 volunteered for the "Democratic Campaign" effort referred to in the complaint. *See*  
21 Pre-RTB letter. In response, the Respondent informed us that "no local 662 member  
22 volunteered to participate in the member-to-member information campaign, and

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1 accordingly, no payments were made by BLET to any Local 662 member.” *See*  
2 Supplemental Response.

3 Based on available information discussed below, we recommend that the  
4 Commission find no reason to believe that BLET violated the Act as alleged in the  
5 complaint and close the file.

## 6 II. LEGAL ANALYSIS

7  
8 It is unlawful for a labor organization<sup>2</sup> to make a contribution or expenditure from  
9 its general treasury fund to any candidate, campaign committee, or political party in  
10 connection with any election to federal office. *See* 2 U.S.C. § 441b(a). In addition, any  
11 officer or director of any labor organization is prohibited from consenting to such  
12 contributions or expenditures. *Id.* For purposes of Section 441b, a “contribution”  
13 includes “any direct or indirect payment, distribution, loan, advance, deposit, gift of  
14 money, or any services, or anything of value” made to a candidate, including all in-kind  
15 contributions. 2 U.S.C. § 441b(b)(2) and 11 C.F.R. § 100.7(a)(1)(iii)(B). The term  
16 “expenditure” is defined to include “any purchase, payment, distribution, loan, advance,  
17 deposit, or gift of money or anything of value, made by any person for the purpose of  
18 influencing an election for Federal office.” *See* 2 U.S.C. § 431(9)(A)(i).

19 However, the Act establishes specific exceptions to the general prohibition that  
20 allow a labor organization to make internal communications to its restricted class,  
21 sponsor a nonpartisan voter registration or get-out-the-vote campaign or establish a

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<sup>2</sup> The term “labor organization” means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employees concerning grievances, labor disputes, wages, rate of pay, hours of employment or conditions of work. 2 U.S.C. § 41b(b)(1).

1 segregated fund to be used for political purposes. *See* 2 U.S.C. § 441b(b)(2). In  
2 particular, the regulations provide that labor organizations can make communications, on  
3 any subject, including communications containing express advocacy to their restricted  
4 class or any part of that class. *See* 11 C.F.R. § 114.3(a). A labor union's restricted class  
5 "is its members, and executive or administrative personnel and their families." *See*  
6 11 C.F.R. § 114.1(j). Labor organizations can even make communications permitted  
7 under Section 114.4 to their restricted class or any part of the class. *See* 11 C.F.R.  
8 § 114.4. The activities permitted under Section 114.4 may involve election-related  
9 coordination with candidates and political committees. 11 C.F.R. § 114.4; *see also*  
10 11 C.F.R. § 100.16 and 114.2(c) regarding independent expenditures and coordination  
11 with candidates.

12       According to the response and the affidavit, the email communication at issue was  
13 sent to members of the Local Division 662, of which Complainant is included, and not to  
14 the general public. The Complainant does not allege anything to the contrary. In  
15 addition, it appears that any subsequent communications that occurred in response to the  
16 request for volunteers were only between members of BLET. The regulations clearly  
17 permit a labor organization to use its general treasury funds for this purpose, including  
18 communications that expressly advocate for the election or defeat of a candidate or  
19 officeholder. *See* 11 C.F.R. § 114.3(a). Accordingly, it was permissible for BLET to  
20 use its general treasury funds to send communications to its members seeking volunteers  
21 to aid in the effort to elect a presidential candidate and to make subsequent member-to-  
22 member communications in support of this effort with no resulting violation of the Act.

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*Id.* Furthermore, there is no information indicating that the Respondent provided payments to volunteers for campaign activities.

### III. Conclusion

Therefore, we recommend that the Commission find no reason to believe that Local Division 662 of the Brotherhood of Local Engineers and Trainmen violated 2 U.S.C. § 441b.

### IV. RECOMMENDATIONS

1. Find no reason to believe Local Division 662 – Brotherhood of Local Engineers and Trainmen violated 2 U.S.C. § 441b;
2. Approve the attached Factual and Legal Analysis;
3. Approve the appropriate letter; and
4. Close the file.

Thomasenia P. Duncan  
General Counsel

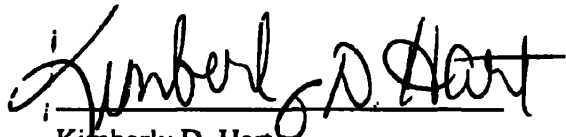
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